

**From:** Karl Leslie <Karl.Leslie@bankerssystems.com> on 11/19/2004 05:31:13 PM

**Subject:** Electronic Fund Transfers

November 19, 2004

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> St. & Constitution Ave., NW  
Washington, DC 20551

**Re: Comments for Docket No. R-1210  
Relating to Regulation E**

Dear Ms. Johnson:

Bankers Systems, Inc., (BSI)<sup>iii</sup> appreciates the opportunity to comment on the Federal Reserve Board's (the Board) publication of proposed rules providing additional guidance within Regulation E regarding electronic check conversion (ECK) transactions and providing that payroll cards are "accounts" covered by Regulation E.

### **I. ECK Transactions**

#### **Many Institutions have Already Provided ECK Disclosures**

The proposed rules discuss ECK as a "new" type of EFT necessitating the development of a "new" disclosure. The discussion then concludes that financial institutions still need to issue disclosures relating to ECK transactions. However, as the Board points out, a final rule amending the Regulation E Commentary was issued in March 2001. That amended Commentary expressly stated that ECK transactions were EFT's. At that time, BSI drafted language for disclosing ECK transactions and that language has been used by many institutions since the 2001 rules were issued. The Board should acknowledge that many institutions have already provided consumers with ECK transaction disclosures and that providing model text now may compel these institutions to consider re-disclosure.

#### **The Proposed Model Text for Disclosing ECK Transactions does not go far enough**

When we drafted our text for disclosing ECK transactions, we tried to draft it broad enough to address other types of third party initiated EFT's such as WEB, TEL (internet and telephone initiated transfers) and NSF fee transactions. While the Board acknowledges these transaction types in its discussion, it ignores them in the proposed model text. We believe consumers, financial institutions and the Board will all benefit from disclosures that are broadly drafted to address these additional EFT types.

## **Six Months is not Enough Time to Implement the Changes**

BSI offers the initial Regulation E disclosure via software, electronic forms, as well as in a paper format. While six months is enough time to incorporate the changes into our paper products, it will not be enough time for implementing the changes into software. As for electronic forms, six months is enough time for us to make the necessary changes, but it will be difficult for our partners to take our electronic forms and then implement them within their software. We propose a twelve (12) month implementation period.

## **II. Payroll Cards**

### **BSI Survey Indicate a High Degree of Interest in Payroll Card Products**

After the proposed rules were issued, BSI conducted an informal survey of financial institutions and their plans for offering payroll card products. Fifteen percent (15%) of the respondents said they currently offer payroll card products. Another fifteen percent (15%) said they plan to offer the product within a year, and twelve and one-half percent (12.5%) more are planning to offer the product within five years. However, eighty-nine percent (89%) of those who responded said they want BSI to offer a product that would assist them in making the necessary payroll card disclosures. As a result of the high degree of interest in payroll cards, BSI is seeking additional guidance from the Board.

### **Further Guidance is Needed Regarding the Application of Other Laws**

In its section by section analysis of the proposed rule the Board states, “The proposed revision is not intended to address the definition of “account” for purposes of any other statute or regulation.” However, on the next page the Board solicits comment on “whether Regulation E coverage should be determined by whether a payroll card account holds consumer funds that qualify as eligible “deposits” for purposes of section 3(l) of the Federal Deposit Insurance Act.” Clearly, the Board recognizes that making payroll card accounts subject to Regulation E raises a host of questions related to the application of other laws and regulations. FDIC insurance coverage is but one example. Other examples include Regulation D (reserve requirements), Regulation CC (funds availability rules), Truth in Savings, and a financial institution’s Customer Identification Program. And these examples do not even touch on state law considerations. As a result, BSI believes the Board should provide additional guidance on the application of other laws to payroll cards. If necessary, such additional guidance should be presented jointly with the other regulatory agencies. Providing this guidance now will help financial institutions offer payroll card products that comply with more than just Regulation E. The effect of not dealing with the complete picture now is that regulations will end up being issued in a piecemeal fashion and, in the interim, both consumers and financial institutions will be left with many unanswered questions.

### **The Board Needs to Ensure the Current Reg. E Disclosures Work for Payroll Cards**

As the Board points out in its discussion, payroll card accounts are different from traditional consumer accounts in that they are not opened by the consumer. Instead, payroll card accounts

are typically opened by the employer (or a third party vendor) on behalf of the consumer. Because of this, BSI is concerned that the model Regulation E disclosures – which are designed to address a two-party relationship – will not always make sense in a payroll card scenario that may involve three or four parties. We believe that the Board needs to carefully review the existing model disclosures to ensure the current language works for all payroll card scenarios. By assuring that there is meaningful model text now, the Board can avoid having to revisit the issue in a future Regulation E update.

Respectfully submitted,

Karl E. Leslie  
Senior Attorney  
On behalf of Bankers Systems, Inc., a WoltersKluwer company

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<sup>11</sup> BSI is a vendor of compliance solutions for the financial services industry. Among other things, BSI provides financial institutions with compliance solutions to help them meet the Regulation E disclosure requirements.